

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-121641-09

Date:

September 29, 2009

### LEGEND:

X =

A =

B =

Trust1 =

Trust2 =

State1 =

Date1 =

Date2 =

Date3 =

Date4 =

Year1 =

Dear

This responds to a letter dated February 17, 2009, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State1 on Date1, and elected to be an S corporation effective Date2.

At the time of the S election, all of the shares of X stock were held equally between two grantor trusts; Trust1 established by A and a trust established by B, the spouse of A. A died on Date3. Upon the death of A, Trust2 was established and the X stock held by Trust1 was transferred to Trust2 on Date4. B, the surviving spouse of A, is the current income beneficiary of Trust2.

X represents that, prior to A's death on Date3, Trust1 was a trust described in § 1361(c)(2)(A)(i). X further represents that between Date3 and Date4, Trust1 was a trust described in § 1361(c)(2)(A)(ii). X also represents that Trust2 meets the requirements to be treated as a qualified subchapter S trust (QSST) as described in § 1361(d) as of Date4, except that B failed to make the required election under § 1361(d)(2). Therefore, Trust2 was not an eligible S corporation shareholder beginning on Date4. As a result, X's S corporation election terminated on Date4.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date4 agree to make any adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date4 resulting from the failure of B, as the current income beneficiary of Trust2, to make the required election under § 1361(d)(2). We further conclude that the termination was inadvertent within the meaning of § 1362(f). In addition, we conclude that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date4 and thereafter, provided that Trust2 qualifies as QSST and X's election to be an S corporation was otherwise valid and was not terminated under § 1362(d) for other reasons.

Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat X as described above, this letter ruling shall be null and void.

This ruling is conditioned on B filing a QSST election under § 1361(d)(2) with respect to Trust1, effective Date4, with the appropriate service center within 60 days from the date of this letter. A copy of this letter should be attached to the QSST election. This ruling is also conditioned on Trust2 and B reporting all of the income on their respective tax returns as if the QSST election for Trust2 was effective for the Year1 taxable year.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b);

whether Trust1 was a trust described in § 1361(c)(2)(A)(i) prior to Date3; whether Trust1 was a trust described in § 1361(c)(2)(A)(ii) for the period beginning Date3 until Date4; or whether Trust2 qualifies as a QSST within the meaning of § 1361(d)(3) beginning Date4 and thereafter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: